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# THE COMMITTEE ON ENERGY AND COMMERCE

## INTERNAL MEMORANDUM

October 21, 2011

TO: Members, Subcommittee on Energy and Power

FROM: Committee Staff

RE: Legislative Hearing on H.R. 1633, the “Farm Dust Regulation Prevention Act of 2011”

On Tuesday, October 25, 2011, at 10:00 a.m. in room 2322 of the Rayburn House Office Building, the Subcommittee on Energy and Power will hold a legislative hearing on H.R. 1633, the “Farm Dust Regulation Prevention Act of 2011.”

### I. WITNESSES

#### Panel 1

**Representative Kristi Noem (SD)**  
U.S. House of Representatives

**Representative Robert Hurt (VA)**  
U.S. House of Representatives

#### Panel 2

**Honorable Gina McCarthy**  
Assistant Administrator for Air and Radiation  
U.S. Environmental Protection Agency

#### Panel 3

**Steve Fogleson**  
Ranch Owner, Black Gold Cattle Company  
and Immediate Past President, NCBA  
*On behalf of:*  
National Cattlemen’s Beef Association

**Kevin Rogers**  
President, Arizona Farm Bureau  
*On behalf of:*  
American Farm Bureau

**Pete Lien**  
President  
Pete Lien & Sons, Inc.  
*On behalf of:*  
National Stone, Sand & Gravel Association

**Kurt E. Blase**  
Partner  
Holland & Knight  
*On behalf of:*  
Coarse Particulate Matter Coalition

**Till von Wachter, Ph.D.**  
Associate Professor of Economics  
Columbia University

**John Walke**  
Senior Attorney and Director, Clean Air Program  
Natural Resources Defense Council

**Gregory Wellenius, Sc.D.**  
Assistant Professor of Community Health  
Brown University

## II. BACKGROUND

Under the Clean Air Act, the Environmental Protection Agency (EPA) has established National Ambient Air Quality Standards (NAAQS) for particulate matter (PM). EPA initially established such standards in 1971, and subsequently revised those standards in 1987, 1997 and 2006. These NAAQS include standards for “coarse” particulate matter, which includes particles 10 micrometers in diameter or smaller, known as “PM<sub>10</sub>,” or dust. Since 1987, EPA has had a PM<sub>10</sub> standard that is a 24-hour standard in a 99<sup>th</sup> percentile form set at a level of 150 micrograms per cubic meter (ug/m<sup>3</sup>). EPA last revisited and decided to retain this standard in 2006. Certain geographic areas continue to work towards attaining the existing standard.

EPA is currently conducting a five-year review of its 2006 PM standards, including for PM<sub>10</sub>. In April 2011, EPA released a ["Policy Assessment for the Review of Particulate Matter National Ambient Air Quality Standards,"](#) which recommends EPA either retain the current PM<sub>10</sub> standard or revise it to a 98<sup>th</sup> percentile form and a level within the range of 85 ug/m<sup>3</sup> down to 65 ug/m<sup>3</sup>. On July 1, 2011, a stakeholder coalition<sup>1</sup> submitted a [report](#) to EPA concluding that, if the agency were to adopt the EPA staff’s proposed alternative standard, it would cause many rural areas to exceed the standard or would bring them to the brink of exceedance of the standard, particularly in rural areas in the West, Southwest and Midwestern United States. The report includes a [map](#) (attached here as Appendix 1) identifying areas especially vulnerable to county-wide or localized exceedances or nonattainment in areas that have been classified, due to the potentially revised PM<sub>10</sub> NAAQS.

On October 14, 2011, EPA Administrator Jackson stated in correspondence that she was prepared to propose the retention, with no revision, of the current PM<sub>10</sub> standard and form when it is sent to the Office of Management and Budget for interagency review. EPA has not yet announced its anticipated schedule for issuance of the proposed rule or completion of the rulemaking process.

## III. SUMMARY OF LEGISLATION

The “Farm Dust Regulation Prevention Act of 2011” was introduced on April 15, 2011, by Representatives Noem, Hurt, Boswell, and Kissell. The bill includes the following provisions:

Section 1: This section provides the short title of “Farm Dust Regulation Prevention Act of 2011.”

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<sup>1</sup> The report was submitted to EPA by the Coarse Particulate Matter Coalition. Coalition members include the National Stone, Sand & Gravel Association, Kennecott Utah Copper, National Cotton Council, National Oilseed Processors Association, and Corn Refiners Association. The report was also sponsored by the National Cattlemen’s Beef Association.

Section 2: Section 2 prohibits EPA from proposing, finalizing, implementing or enforcing any regulation revising the National Ambient Air Quality Standards applicable to coarse particulate matter for one year from the date of enactment.

Section 3: Section 3 provides that “nuisance dust” shall not be subject to regulation under the Clean Air Act, except to the extent that nuisance dust in a geographic area is not currently regulated by state, tribal or local law and the Administrator of EPA finds: (i) nuisance dust causes substantial adverse public health and welfare effects at ambient concentrations; and (ii) the benefits of applying standards and requirements of the Clean Air Act to nuisance dust outweigh the costs (including economic and employment impacts) of applying the standards.

Section 3 defines “nuisance dust” to mean particulate matter (i) generated from natural sources, unpaved roads, agricultural activities, earth moving, or other activities typically conducted in rural areas; or (ii) consisting primarily of soil, other natural or biological materials, windblown dust, or some combination thereof.

#### **IV. ISSUES**

The following issues are expected to be examined at the hearing:

- EPA’s current regulation of dust under the PM10 standard;
- EPA’s ongoing review of the PM10 standard;
- Sectors potentially impacted by a change in the current PM10 standard; and,
- Potential impacts on jobs and the economy in rural America.

#### **V. STAFF CONTACT**

If you have any questions regarding the hearing, please contact Mary Neumayr at (202) 225-2927.

## **Appendix 1**

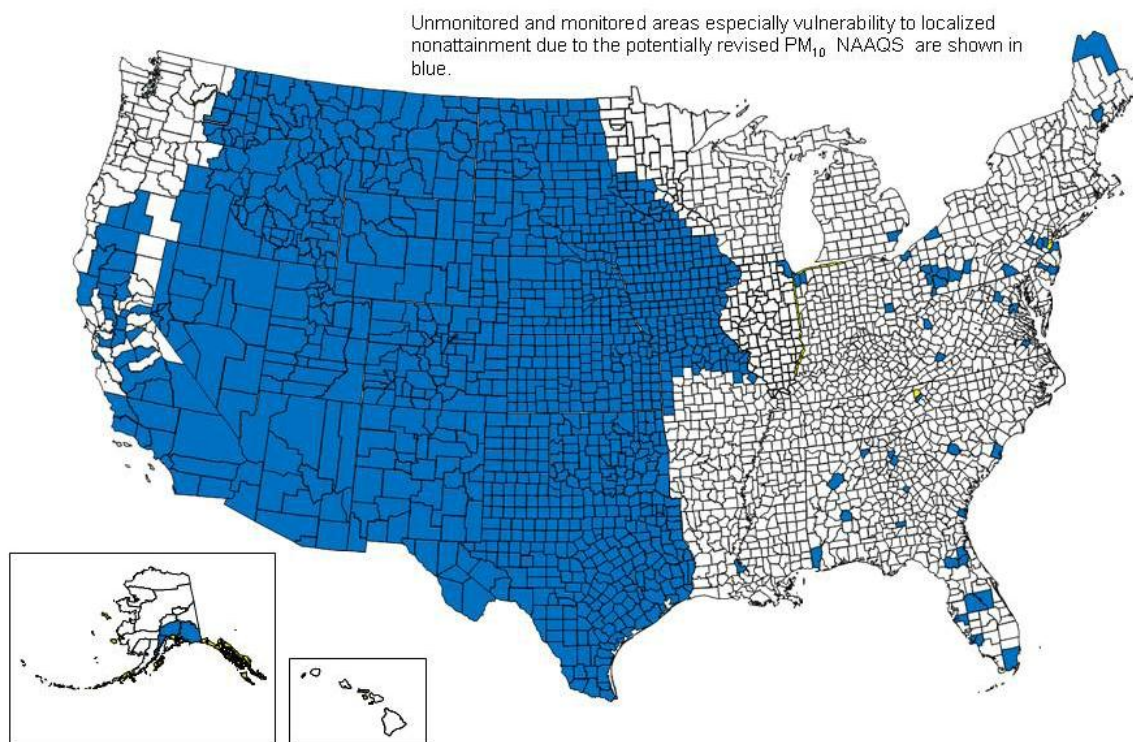


Figure 4-13. Areas especially vulnerable to county-wide or localized nonattainment due to the potentially revised NAAQS

Source: "Evaluation of Potential Changes to the Coarse Particulate Matter National Ambient Air Quality Standard," Report Prepared for the Coarse Particulate Matter Coalition by John Richards, Ph.D., P.E., June 2011